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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	)	CS Docket No. 96-60
	)	
Leased Commercial Access	)	

<u>COMMENTS OF HOME & GARDEN TELEVISION</u>

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May 15, 1996

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To: The Commission

COMMENTS OF HOME & GARDEN TELEVISION

1. Home & Garden Television ("HGTV"), through counsel, files these comments in response to the Further Notice of Proposed Rulemaking ("Further Notice") regarding replacing the implicit fee formula for leased commercial access with the cost/market rate formula. As any reduction of the rates for commercial leased access could reduce the number of available channels on cable systems, HGTV opposes the proposed implementation of the cost/market rate formula.

2. HGTV was launched in December 1994. The network is now carried by almost 600 cable systems, with 15 million subscribers under contract. In a recent survey of cable operators, HGTV ranked third among 45 cable networks that operators wanted to add within the next 12 months.[1]

3. The opportunity for HGTV and other networks to expand could be greatly reduced if the Commission adopts the cost/market rate formula, which would effectively reduce rates for leased

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[1] "HGTV Growing Good Numbers," Broadcasting and Cable, May 6, 1996, at 44.

access programming. The lack of vacant channels on many cable systems restricts carriage opportunities for new cable networks. Cable operators are hesitant to drop existing programming in favor of a new network, as dropping existing programming may lead to subscriber complaints. A new network may be able to obtain carriage through placement on a dark leased access channel, with the understanding that non-leased access programming may be preempted in favor of leased access programming. This option becomes less attractive--if not impossible--to the non-leased access programmer, however, as the risk of preemption by leased access programming increases. Indeed, the Commission recognizes in the Further Notice that "[t]he risk of having to bump . . . may increase with the introduction of the cost formula, or whatever formula we adopt, depending on the extent to which rates using the adopted formula affect the utilization of leased access." Id. at ¶ 99. Therefore, lowering leased access rates could reduce the availability of usable cable channels, resulting in additional competition among cable networks for increasingly scarce channel capacity.

4. In determining how best to fulfill the statutory mandate of leased access, the Commission should consider the potential loss of diversity of programming that could occur if reduced leased access rates lead to a reduction in the number of available channels. The current implicit fee formula strikes a proper balance between the interests of leased access programmers and cable systems, while at the same time providing an opportunity for cable networks to employ unused leased access

channels. Altering this balance would not serve the public interest.

Respectfully submitted,

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